IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY NINETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION No. 9167 of 2004

AND

W.V.M.P. No.1357 of 2004 IN WPMP.No.11782 of 2004

WRIT PETITION No.9167 OF 2004

Between:

M/s.Arihant Enterprises, 5-9-1107, Anand Towers, Near Bhartiya Vidya Bhavan Lane, King Kothi Road, Hyderabad-500 001.

..... PETITIONER

AND

The Commercial Tax officer, M.J.Market Circle, Abids Division, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly in the nature of writ of Mandamus to ---- a) declare Section 28-A of the APGST Act as unconstitutional and violating Article 19(1) (g) and 300-A in the absence of provisions for restoration of goods in the event of petitioner succeeding in any remedies against the order of acquisition and consequently direct the Respondent to release the 700 sheets of plywood and 10,588 sheets of veneers detained since 27-4-2004. b) declare the action of the respondent in so far as invoking section 28-A of the APGST Act, Vis-a-Vis., goods in stock lying with the petitioner as being without jurisdiction and consequently set-aside the initiation of proceedings under section 28-A of the APGST Act by the Respondent by his proceedings dated 27-4-2004 and consequently direct release of the goods under detention to the petitioner forthwith; and c) further declare that Rule 49-A(3) of the APGST Rules does not permit removal of stock from the petitioner's custody, by the Department, without effecting prior payment of cash

compensation in terms of section 28-A(6) of the APGST Act and read down Rule 49-A (3) to the said extent if the provision is construed otherwise.

Counsel for the Petitioner:MR.S.DWARAKANATH, Advocate.

Counsel for the Respondent : SPECIAL GP FOR TAXES

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W.V.M.P. NO : 1357 of 2004

Between:

The Commercial Tax Officer, M.J.Market Circle, Abids Division, Hyderabad.

..... PETITIONER (RESPONDENT in

W.P.No.9167 of 2004 on the file of the High Court)

AND

M/s.Arihant Enterprises, 5-9-1107, Anand Towers, Near Bhartiya Vidya Bhavan Lane, King Kothi Road, Hyderabad-500 001.

.....RESPONDENT (PETITIONER in W.P.No.9167 of 2004 on the file of the High Court)

Petition under Section 151 CPC praying that for the reasons stated in the counter affidavit filed in the Writ Petition No.9167 of 2004, the High court will be pleased to vacate the interim orders passed on 18.5.2004 in W.P.M.P.No.11782 of 2004 in W.P.No.9167 of 2004.

Counsel for the Petitioner : SPECIAL GP FOR TAXES

Counsel for the Respondent : MR.S.DWARAKANATH, Advocate.

The Court made the following :

ORDER : (Per Sri Bilal Nazki, J).

Heard learned Counsel for the parties.

A vacate stay petition has been filed. The facts of the case reveal that when certain goods belonging to the petitioner were sought to be acquired in terms of Section 28-A of Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as 'the Act') and a show cause notice was issued, the petitioner approached this Court, challenging Section 28-A of the Act as unconstitutional. The Court entertained the Writ Petition and directed that the goods, which were likely to be acquired, may not be sold. That order is still in operation, therefore a vacate stay petition has been filed.

After the Writ Petition was filed, it appears that the concerned authorities have passed orders under Section 28-A of the Act, acquiring the goods and the petitioner had filed an appeal, which has already been dismissed. Second appeal is being filed today, as is submitted by the learned Counsel for the petitioner. We feel that if the appellate authority is seized of the matter, there is no necessity for this Court to hear the matter and pendency of the same matter in two Courts is not even otherwise appropriate. For this reason alone, we dismiss the Writ Petition.

The challenge to Section 28-A of the Act is not being considered by us at this stage and if the petitioner feels aggrieved, in future, he has liberty to file a fresh petition challenging Section 28-A of the Act. In the interest of justice, we grant two weeks stay to enable the petitioner to seek appropriate orders from the appellate authority. W.V.M.P. stands disposed of accordingly.

(BILAL NAZKI, J)

29th July, 2004.

(S.ANANDA REDDY, J)

N.B:-

C.C. in two days.

(B/o)

ajr.

To

1 The Commercial Tax officer, M.J.Market Circle, Abids Division, Hyderabad.

2 Two C.Cs. to the Special G.P. for Taxes, High Court buildings,

Hyderabad (O.U.T.)

3 Two C.D. copies.